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[REDACTED] EXAMINER

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ART UNIT	PAPER NUMBER
1731	18

DATE MAILED: 05/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE

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EXAMINER

APR 1977 PAPER NUMBER

18

DATE MAILED

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

 THE PERIOD FOR RESPONSE:

- a) is extended to run _____ or continues to run 3 months from the date of the final rejection
- b) expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due in accordance with 37 CFR 1.192(a).

Applicant's response to the final rejection, filed 5-7-02 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

- a. There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. They raise new issues that would require further consideration and/or search. (See Note).
- c. They raise the issue of new matter. (See Note).
- d. They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

2. Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. Upon the filing an appeal, the proposed amendment will be entered will not be entered and the status of the claims will be as follows:

Claims allowed: _____

Claims objected to: _____

Claims rejected: 1-3

However;

Applicant's response has overcome the following rejection(s): _____

4. The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because Unit 9 is Associated with 17 because They Are part of the same apparatus All of the disclosed features are associated together.

5. The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

The proposed drawing correction has has not been approved by the examiner.

Other Although it is true that two burners on the same stage are associated, the "associated" is NOT defined to preclude the burners on other stages are from being "associated."

JOHN HOFFMANN
PRIMARY EXAMINER
GROUP 1300

5-13-02

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DETAILED ACTION

Election/Restriction

Newly submitted claim 4 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 4 requires that the axis of the heating means is offset from the injector means, i.e. they do not intersect. Original claim 3 requires that the two things be at an angle, i.e. they intersect. Intersection and non-intersection are mutually exclusive species. Therefore, claims 3 and 4 are drawn to mutually exclusive species.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 4 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 6-1-01 have been approved.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: the d' of page 9, line 7 is not in the drawing. Correction is required.

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Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Although claim 3 was not amended itself, since claim 1 is amended, claim 3 now requires something not previously disclosed. Claim 3 requires that the main axis of the heating means and the heating means of the injector means be at a fixed angle. Claim 1 now requires that the relative positions of the injector means and the heating means are adjusted with respect to each other. The only way these two conditions can be met is by moving one of the two means along its main axis - but there is simply no support for this. The only disclosure for relative movement with respect to each other is the type shown in figures 4-5 - but for this embodiment, the axis are not at a fixed angle. Notice the spacing "d" in figures 4-5: the two lines never intersect - there is no angle (fixed or otherwise) between the two axes.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 rejected under 35 U.S.C. 102(b) as being anticipated by Powers 4568370

AS to the method being a method of fabricating an optical fiber preform, see the TITLE. AS to the “outside deposition”, see figures 3 and/or 7, because the deposition occurs outside of the preform. As to the deposition of silica possibility doped with at least one dopant by injecting at least one substance in the form of silica or a precursor of silica, see figure3, feature 40. AS to the “heating area”. It is deemed that the area bounded by lines “D” and “C” is such an area because it is an area and a portion of that area is heated. 41 is the “heating means”. 40 is the “injector means”. The double headed arrow near each of 40 and 41 represents that there is at least one pass and that the position of each relative to each other is altered - at least when they reach their turn-around points.

As to claim 2, it is clear that adjustment is always occurring - thus it occurs between each pass. It is further noted that one can arbitrarily define what constitutes each pass so that there is a time period between each one so as to have a period of time between each pass. For example a pass could be defined as a downward movement only.

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As to claim 3, Looking at figures 3 and 4 it is clear that at any given instant in time the heating means 41 has a main axis in a plane that is perpendicular to the longitudinal axis. And the injector means 40 has a main axis at a fixed angle to the main axis of the heating means - it is about 90 degrees. All of the other limitations are clearly met. Alternatively, it is deemed that they meet at a fixed angle - if for only a short period of time.

Claim Rejections - 35 USC § 112

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is not understood because it requires the that the heating and injector means to be in a plane and at a fixed angle and that they moved. It appears to require two contradictory things. If the devices are to move as claimed, their axes fail to remain in the plane.

Response to Arguments

Applicant's arguments filed 1 June 2001 have been fully considered but they are not persuasive.

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Regarding the 112 rejection it is stated that the “injector means has a main axis at a fixed angle to the main axis of the heating means”. But there is no evidence or rational to explain this. There is a statement that the main axis of the injector means protrudes upwards out of the page in figure 4. If anything this demonstrates that there is no angle between the two axes. Figure 4 clearly shows that the closest distance between the two axes is “d” - thus the two axes NEVER intersect. If two lines don’t intersect, they are either parallel or skew - in either case, there is not an angle between them.

It argued that the adjustment of the means with respect to each other so that there is no cold area of the cone, among other things. This is irrelevant, because the claims do not require any cone or cold area.

It is still further argued that Powers fails to teach relative positioning of components within the burners. The relevance of this is not understood, because the claims don’t even require even a single burner.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Requests for interviews

The Office initiates interviews whenever it is deemed that it would be beneficial to do so to advance prosecution. And when an Applicant wishes to have an interview, the burden to initiate the interview remains solely with Applicant. MPEP 408 notes that Examiners are not required to note or acknowledge requests for telephone calls or state reasons why such proposed telephone interview would not be effective; therefore, requests for the Office to initiate interviews will not be acknowledged.

MPEP 713.05, 713.03, 713.09, and 713.01 and common sense indicate that any of the following questions would be appropriate for the Office to ask prior to granting an interview: Has there already been an interview of record in the case? Will the interview last more than 30 minutes? When do you want the interview? Does Applicant's representative have Power of Attorney? Does Applicant's representative have authority to bind the principal concerned? (i.e. Does Applicant's representative have authority to make any and all changes?) Who will participate in the interview? What is the intended purpose(s) of the interview? What is the intended content of the requested interview? Failure to volunteer the above information might possibly result in a denial of an interview, or the inability of the Examiner to adequately answer Applicant's questions during the interview.

CONTACT INFORMATION

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6-12-01